

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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| DENNIS ALLEN, et al. | : | Case No. C-1-01-159 |
| Plaintiffs | : | Judge Herman S. Weber |
| | : | Magistrate Judge Timothy S. Hogan |
| | : | |
| vs. | : | |
| | : | |
| THE LASSEN COMPANIES, INC., et al.: | : | |
| | : | |
| Defendants | : | |
| | : | |

**PLAINTIFFS' REPLY TO DEFENDANT CRARY'S OPPOSITION TO
PLAINTIFF' MOTION FOR EXTENSION OF TIME
TO FILE RESPONSE TO OBJECTIONS TO THE REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE HOGAN ON DEFENDANT CRARY'S
MOTION FOR SUMMARY JUDGMENT**

* * * *

Plaintiffs, Dennis Allen, et al. ("Plaintiffs"), moved this Court for an extension of time to file a Motion to Review the Report and Recommendation of Magistrate Judge Hogan in the above entitled action. The Response is currently is due on November 15. Plaintiffs requested an extension of one (1) week, up until Monday, November 22, 2004, to file its Memorandum in Opposition to Defendant Crary's Objections to the Magistrate's Report and Recommendation on Crary's motion for summary judgment. Defendant Crary has filed his Opposition to Plaintiffs' requested extension.

Plaintiffs request was necessitated by the press of business, which included preparation and filing of appellant's reply brief in the United States Court of Appeals for the Sixth Circuit in the matter of *Everett Whisman, et al. v. Ford Motor Company and ZF*

Batavia, LLC, Sixth Circuit Case No. 04-3877. In addition, Plaintiffs' counsel was required to prepare for and appear at hearings on Plaintiffs' motion for final judgment and calculation of losses, and Defendants' Objections to Special Master's Final and Supplemental Reports before the United States District Court for the Western District of Kentucky in the matter of *Horn et al. v. McQueen et al.*, 3:98-cv-591C (Judge Coffman). Those hearing were held before the Court in sitting at the Eastern District of Kentucky, Lexington, at 2:00 p.m. Friday, November 12. Finally, counsel's associate was required to attend and participate in the status conference and settlement efforts directed by the court in the matter of *Lorillard Tobacco, et al. v. Chester Willcox & Saxbe, et al.*, Case No. C2-04-715.

In addition, the undersigned had - prior to issuance of the Magistrate's Report or Defendant Crary's Objections - committed to and paid for activities with his daughter at Indiana University in Bloomington, Indiana on Saturday, November 13, and Sunday, November 14, 2004. Finally, plaintiffs' lead counsel will begin serving jury duty in the Hamilton County Common Pleas court on Monday, November 15, 2004 for a period of one week.

Plaintiffs' counsel regrets that in the extreme press of business he neglected to first contact counsel for Defendant Crary to discuss the requested extension, and apologizes for that oversight. Mr. Crary's assertion of a "pattern of untimeliness throughout this litigation" is without foundation, and incorrect. With respect to the issues Mr. Crary asserts (Plaintiffs' motion for summary judgment), Plaintiffs' had requested an extension of the period within which to file dispositive motions due to the lack of a controlling decision on the then pending Objections to the Magistrates' Report on Mr. Crary's motion to dismiss.

Had Plaintiffs' motion for summary judgment in fact been untimely, the Court would have rejected it at filing. Instead, in light of the confusion surrounding the then pending Objections and their effect on the dispositive motion deadline, the Magistrate specifically allowed Plaintiffs' motion to be filed.

For these reasons, Plaintiffs' respectfully submit their motion to extend time to respond to Defendant Crary's Objections is well-taken and should be granted.

Respectfully submitted,

s/David M. Cook

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Stephen R. Felson, 617 Vine Street, Suite 1401, Cincinnati, Ohio 45202, Trial Attorney For Defendant Crary, Paul D. Marotta, The Corporate Law Group, 500 Airport Blvd., Suite 120, Burlingame, CA 94010, Of Counsel for Defendant Crary, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: Leonard Kristal, 107 Diablo Drive, Kentfield, CA 94904.

s/David M. Cook

ATTORNEY FOR PLAINTIFFS